

## Moral Dilemma and Moral Sense: A Phenomenological Account

In *Existentialism is a Humanism*, Jean-Paul Sartre relates the experience of one of his students, who is faced with an extraordinarily difficult choice. On the one hand, the student feels that he ought to join the Free French Forces in England. His older brother had been killed in a German offensive in 1940, and the student wants very badly to avenge his death. On the other hand, the student feels strongly that he must support his mother, whose husband had abandoned her and whose life is now devoted to her only surviving son. The student must choose between these alternatives; he cannot do both. If he joins the Free French Forces, he abandons his mother for the sake of a very uncertain outcome, to which he could contribute at best very little. And if he stays with his mother, he foregoes the opportunity to avenge his brother's death and to fight for the preservation of the French nation.<sup>1</sup> Over the last forty years, a vast literature has emerged, mostly in the analytic tradition, to address problems of this sort, which are known as moral dilemmas. Most basically, this literature is concerned with the question whether there are any genuine moral dilemmas. That is to say, can it ever happen that a moral agent ought to perform act A and ought to perform act B, but cannot in fact perform both? Can it be the case, for example, that Sartre's student really ought to join the Free French Forces and also that he really ought to stay home and support his mother? Or is there a higher order moral principle that would reveal the dilemma to be merely apparent, for example by showing that one of the oughts trumps, and thereby cancels, the other?

I believe that the phenomenological tradition has important contributions to make to these debates. More specifically, I believe we can gain considerable insight into the

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<sup>1</sup> Jean-Paul Sartre, *Existentialism is a Humanism*, trans. Carol Macomber, ed. John Kulka (New Haven: Yale University Press, 2007), 30-31. Hereafter EH.

possibility of moral dilemmas by paying close attention how moral sense is most originarily given. In this paper, then, I will suggest an account of moral sense-bestowal that is grounded in the phenomenology of expression that Maurice Merleau-Ponty developed throughout the course of his philosophical work, and most explicitly in the period immediately following the publication of *Phenomenology of Perception*. Based on the Merleau-Pontian account of moral sense-bestowal that I am suggesting, I will defend the view there are genuine moral dilemmas, i.e., that we can be faced with situations of conflicting oughts that we cannot resolve without moral remainder. In what follows I will begin by laying out the most important and influential arguments concerning the possibility of moral dilemmas, focusing on those that are most relevant to the theses I will advance. Next, I will examine the sharply different accounts of moral sense-bestowal suggested by R.M. Hare and Jean-Paul Sartre. Finally, calling upon Merleau-Ponty's phenomenology of expression, I will advance what I take to be a more adequate account and I will show how it supports the conclusion that moral dilemmas are possible.

## I. Moral Remainder and Moral Dilemma

In the Introduction to the *Metaphysics of Morals*, Immanuel Kant argues forcefully that genuine moral dilemmas are impossible:

But since duty and obligation are concepts that express the objective practical necessity of certain actions and two rules opposed to each other cannot be necessary at the same time, if it is a duty to act in accordance with one rule, to act in accordance with the opposite rule is not a duty but even contrary to duty; so a collision of duties and obligations is inconceivable (*obligations non colliduntur*).<sup>2</sup>

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<sup>2</sup> Immanuel Kant, *The Metaphysics of Morals* in Immanuel Kant, *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, trans. and ed., Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 378 [6:224]. Page numbers in brackets refer to those of the Akademie Edition. Hereafter MM.

Essential to Kant's argument is the claim that obligation is a necessitation of the will. To be obligated is not merely to have a good reason to do something. If I want to become a good piano player, for example, I have a good reason to practice regularly, since practice is an indispensable means to my end. But I am certainly not obligated to practice the piano. I am, on the other hand, obligated to refrain from making lying promises. It is not merely the case that I have good reason to do so; rather, as a rational being with a legislative faculty of pure practical reason, I recognize immediately the moral impossibility of making a lying promise. I absolutely must not make the lying promise, even if I have strong non-moral reasons to do so. If this account of obligation is correct, then moral dilemmas are, as Kant suggests, inconceivable. It cannot be the case that I am morally necessitated to do A and not-A (or that I am morally necessitated to do A and B, where A and B are contingently incompatible) any more than it can be the case that I am theoretically necessitated to accept the truth of both A and not-A.

One might object to this argument, though, on the grounds that it is unfaithful to our actual moral experience. Moral dilemmas, according to the objection, are so familiar from everyday experience that we cannot plausibly deny their reality. If I have \$500 that I want to donate to charity, for example, I might feel that I should give it to Oxfam, but that I ought also to give it to Greenpeace, as I judge both to be worthy charities doing morally important work. But I cannot support each to the degree I think I ought. Or, to take another example, I might have borrowed \$500 with a promise to pay it back on a specific date, but subsequently learned of a natural disaster whose harmful effects I could mitigate somewhat by donating the \$500 to Oxfam. In this case, I might experience a conflict between an obligation to keep my promise and an obligation to beneficence. But

on the Kantian account, neither of these constitutes a genuine moral dilemma. In the first example, the conflict is between two possible ways of fulfilling the imperfect duty to beneficence. An imperfect duty is one that “leaves a playroom (*latitudo*) for free choice in following (complying with) the law,” as “the law cannot specify precisely in what way one is to act and how much one is to do....”<sup>3</sup> In the case under consideration here, the moral law does command us to make the happiness of others our own end, but it commands this only as a general policy; the law does not specify precisely the ways we must act in each case where the opportunity to fulfill the duty arises. It follows, then, that I am not under any specific obligation to give \$500 either to Oxfam or to Greenpeace, and so there is no genuine moral dilemma. In the second example, I face a conflict between an imperfect duty (the duty to beneficence) and a perfect duty (the duty to keep my promises). This, according to Kant, is not a proper conflict of obligations, but rather a conflict between two grounds of obligation: “When two such grounds conflict with each other, practical philosophy says not that the stronger obligation takes precedence (*fortior obligatio vincit*) but that the stronger *ground of obligation* prevails (*fortior obligandi ratio vincit*).”<sup>4</sup> That is to say, when a perfect duty, which allows for no exceptions whatever, conflicts with a possible manner of fulfilling an imperfect duty, then it is the act that fulfills the perfect duty that is obligatory, and not the one that fulfills the imperfect duty. Importantly, Kant does not mean merely that the perfect duty outweighs the imperfect duty; in choosing to return the \$500 that I had borrowed, I do not leave a lesser obligation unfulfilled. Kant’s point is that, given my promise to pay back the \$500, I have no obligation whatever to donate it to Oxfam, and hence no conflict of obligations.

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<sup>3</sup> Ibid., 521 [6:390].

<sup>4</sup> Ibid., 379 [6:224].

In his influential paper “Ethical Consistency,” Bernard Williams challenged the idea that moral dilemmas are only ever apparent dilemmas, that in any conflict, one of the purported obligations could be shown to have no genuinely obligating force. Williams’s account is phenomenological in the broadest sense of the term: he pays close attention to the lived experiences of different kinds of conflict and then draws conclusions from those experiences about the natures of the conflicts themselves. Williams begins by contrasting the experience of recognizing a conflict of beliefs with that of recognizing a conflict of desires. Suppose, for example, that I believe the Houston Astros will win the 2014 World Series and that a National League team will win the 2014 World Series. These two beliefs conflict: the Houston Astros are an American League team, and it cannot happen that an American and a National League team both win the World Series in a given year.<sup>5</sup> In cases like this, one of the beliefs will prevail, and not merely take precedence, over the other. Once I am informed that the Astros are an American League team, I do not resolve the conflict by weighing how much truth each belief has and choosing the one that has more truth. Rather, I will recognize that at least one of the beliefs simply is not true at all. Once I commit myself to the belief, say, that the Houston Astros will win the 2014 World Series, I give up my belief in the truth of the claim that a National League team will win. The rejected belief is simply eliminated from the scene.<sup>6</sup> The case of conflicting desires is importantly different. If I desire two different pairs of shoes—say a pair of monk straps and a pair of oxfords—but can only afford one of them, then I must choose between them. In this case, one of the two desires will take precedence, but not prevail. That is to

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<sup>5</sup> Until the 2013 season, the Houston Astros were a National League team, and so it is not unrealistic that a person could hold this conflicting set of beliefs.

<sup>6</sup> Bernard Williams, “Ethical Consistency” in *Problems of the Self: Philosophical Papers 1956-1972* (Cambridge: Cambridge University Press, 1973), 169-170.

say, in recognizing that I desire the monk straps more than the oxfords, I do not judge the oxfords to be simply undesirable. My desire for the oxfords survives my choice for the monk straps.<sup>7</sup>

One of the questions Williams attempts to answer in “Ethical Consistency” is whether moral conflicts are more like conflicts of beliefs or conflicts of desires. When I experience myself as subject to two incompatible oughts and choose one of them, does the other ought survive the choice? Do I continue to experience it as obligating me in some way? Or must it be the case that at least one of the oughts was only apparently obligating? Williams’s conclusion is that moral conflicts are more like conflicts of desires. After we have made the choice to act on the basis of one ought rather than another, we feel the presence of a moral remainder.<sup>8</sup> This remainder often takes the form of regret. For example, if I promise to meet a friend for lunch, but choose to break the promise in order to take my sick cat to the veterinarian, I will likely feel as if I ought to make it up to the friend in some way. This is true even if, upon careful reflection, I conclude that taking my cat to the veterinarian really was the morally best course of action. My obligation to take care of my cat outweighed my obligation to meet my friend for lunch, but it did not eliminate it; the obligation continues to weigh on me and I look for opportunities to fulfill it, even though I can only do so imperfectly. The fact that most of us are familiar with this experience of moral remainder suggests that genuine moral dilemmas are possible.

The objections to this argument are obvious. As Philippa Foot has argued, “it is impossible to move from the existence of the feeling to the truth of the proposition

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<sup>7</sup> Ibid., 170.

<sup>8</sup> Ibid., 179.

conceptually connected with it, or even to the subject's acceptance of the proposition.”<sup>9</sup> That is to say, we cannot move from the feeling of regret for having failed to fulfill an obligation to the truth of the claim that there was a binding obligation that we failed to fulfill. It may be the case, for example, that the unfulfilled obligation was merely a *prima facie*, and not an actual, duty. To return to the previous example, one could argue that I do have duties both to keep the promise I made to my friend and to look after the welfare of my cat, but that both of these duties are *prima facie*. According to W.D. Ross, whenever I find myself in such a situation, all I can do is study the case as carefully as I can until I recognize that one of the duties has greater moral importance than the others; at that point “I am bound to think that to do this *prima facie* duty is my duty *sans phrase* in the situation.”<sup>10</sup> Once I conclude that my duty proper is to take care of my cat, I should recognize that it is not my duty proper to meet my friend for lunch. Therefore, I should not experience any kind of moral remainder once I have chosen in favor of my cat; if I do, it is because I have misunderstood the moral sense of the situation.

Another possibility is that Kant was right, that duties cannot conflict and that our perception that they do is simply mistaken. This is the argument that Alan Donagan advances in his “Consistency in Rationalist Moral Systems.” Donagan’s argument makes use of a powerful example of moral dilemma advanced by Ruth Barcan Marcus: “The lives of identical twins are in jeopardy, and, through force of circumstances, I am in a position to save only one. Make the situation as symmetrical as you please.... [H]owever strong our wills and complete our knowledge, we might be faced with a moral choice in

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<sup>9</sup> Philippa Foot, “Moral Realism and Moral Dilemma,” *The Journal of Philosophy* 80, no. 7 (1983): 382.

<sup>10</sup> W.D. Ross, *The Right and the Good*, ed. Philip Stratton-Lake (Oxford: Oxford University Press, 2002), 19.

which there are no moral grounds for favoring doing *x* over *y*.”<sup>11</sup> Surely in a situation such as this, a person would feel regret no matter how she chose, and rightly so. Since both of the children make genuine, morally binding claims on her, she cannot avoid leaving a moral remainder. But this is exactly what Donagan denies: “from the fact that I have a duty to save either *a* or *b*, it does not follow that I have a duty to save *a* and a duty to save *b*.”<sup>12</sup> Morally speaking, according to Donagan, it makes no difference whether the agent saves *a* or *b*; she fully satisfies her duty by saving either one of them. This is because the agent is faced with what Kant called a conflict between grounds of obligation, and because neither one of those grounds prevails over the other. Since neither ground prevails, the agent is not genuinely obligated to save *a* and she is not genuinely obligated to save *b*. If the agent chooses to save *a*, then, she has not failed to fulfill a duty to *b*, and so she ought not to feel any guilt about not saving *b*. The question whether to save *a* or to save *b* is simply not a moral question.<sup>13</sup>

This is exactly the sort of position that Marcus describes as being “false to the facts.”<sup>14</sup> People really do feel guilty in cases like the one Marcus described. But many philosophers, including most prominently Earl Conee, Philippa Foot, and Terrance C. McConnell, have attempted to show that the agent’s feeling is not best understood as guilt, and that it cannot therefore count as evidence in favor of the existence of genuine moral dilemmas. McConnell has argued, for example, that the feeling we experience in supposed moral dilemmas is simply regret at finding ourselves in situations in which

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<sup>11</sup> Ruth Barcan Marcus, “Moral Dilemmas and Consistency,” *The Journal of Philosophy* 77, no. 3 (1980): 125. Hereafter MDC.

<sup>12</sup> Alan Donagan, “Consistency in Rationalist Moral Systems,” *The Journal of Philosophy* 81, no. 6 (1984): 307.

<sup>13</sup> *Ibid.*, 307-308.

<sup>14</sup> Marcus, MDC, 130, 133.



there are no good options, and in which we are forced to choose the least bad.<sup>15</sup> And Conee, addressing Bernard Williams's example of Agamemnon at Aulis, suggests that the agent's feeling could plausibly be interpreted as regret at having committed such a dreadful act.<sup>16</sup> Marcus resists these kinds of interpretations. When women obtain abortions, for example, they often report feelings of guilt, even when they believe they have done the morally right thing.<sup>17</sup> It is inappropriate, she thinks, to try to reinterpret their feelings; it really is guilt they are experiencing, and not merely sadness at finding themselves in situations in which they have had to make difficult decisions.

## II. Moral Sense-Bestowal in R.M. Hare and Jean-Paul Sartre

This summary of the debate between Williams and Marcus on the one hand and Donagan, Conee, and McConnell on the other brings to the fore one of the central questions at issue in discussions between proponents and opponents of moral dilemmas: do rational principles provide the measure for our moral intuitions, or should the principles be formulated in a way that is responsive to those intuitions? Williams and Marcus seem to regard it as obvious that our intuitions contribute in important and irreducible ways to our understanding of the moral sense of the situations we find ourselves in. If our principles are inconsistent with our intuitions, this counts as evidence that our principles are in need of revision. Rationalist ethical theorists like Donagan, and of course Kant, argue that our intuitions cannot make any such contribution; the question whether our intuitions reveal any objectively valid moral sense is to be answered entirely by reference to rational principles. In this section I will examine the very different

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<sup>15</sup> Terrance C. McConnell, "Moral Dilemmas and Consistency in Ethics," *Canadian Journal of Philosophy* 8, no. 2 (1978): 277.

<sup>16</sup> Earl Conee, "Against Moral Dilemmas," *The Philosophical Review* 91, no. 1 (1982): 90. Hereafter AMD.

<sup>17</sup> Marcus, MDC, 133.

arguments advanced by R.M. Hare and Jean-Paul Sartre concerning these questions, which are most fundamentally questions about moral sense-bestowal. These arguments will help to bring out what I think is most distinctive and most valuable in the Merleau-Pontian approach, which I will begin to articulate in the following section.

In *Moral Thinking: Its Levels, Method, and Point*, R.M. Hare argues unambiguously in favor of the position that rational moral principles—what he calls the level of critical thinking—are “epistemologically prior” to our intuitions.<sup>18</sup> One of the reasons Hare gives for this position is that our intuitions, which are the products of our upbringing and of our accumulated experience in making moral decisions, are necessarily quite simple. This simplicity is their virtue: in our day-to-day lives, we face situations that are in some ways novel, but that are nonetheless quite regular. Yesterday I promised my students I would have their exams graded within a week, and today I promised a sick relative that I would visit her in the hospital. There are of course important differences between these two promises, but if I had to take into account how all those differences might bear on the rightness or wrongness of breaking the promises, I would find it very difficult to act in the world. Because I was educated in basic moral principles as a child, my intuitions tell me straightaway that I ought to keep the promise in each case. But this simplicity is also the source of moral difficulties: sometimes I encounter situations that are too complex for my intuitions to handle reliably. When those situations arise, I have no option but to look to a higher level of moral reasoning for the solution to my problem.<sup>19</sup> A second reason Hare gives in favor of the epistemological priority of principles is that our intuitions are not self-justifying. That is to say, it is always an open

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<sup>18</sup> R.M. Hare, *Moral Thinking: Its Levels, Method, and Point* (Oxford: Oxford University Press, 1981), 46.

<sup>19</sup> *Ibid.*, 35-36.

question whether my moral education was good and whether the decisions I have made in the past were correct. If the answer to these questions is no, then I have no reason to trust that my moral intuitions are guiding me in the right way. And if I want to test whether or not I have the right intuitions, I obviously cannot decide the case on the basis of my intuitions, since their rightness is the very thing in question; again, I must decide the case on the basis of a higher level of moral reasoning.<sup>20</sup>

On Hare's account, then, the right solution to a moral problem is always the solution that would be given by a being who could reason entirely at the level of critical thinking, without the slightest need for intuitions. This idealized being, whom Hare calls the archangel, would have "superhuman powers of thought, superhuman knowledge, and no human weaknesses."<sup>21</sup> When confronted with a situation calling for a moral decision, the archangel would be able to comprehend every facet of the situation that was morally relevant, to envision all the possible actions available to him, and to formulate on the spot a universal principle that would be acceptable for anyone in the situation.<sup>22</sup> Of course no actual human being is capable of reasoning as the archangel does. Nonetheless, the archangel provides an ideal that we all ought to strive to approximate. When we try to train others and ourselves to have moral intuitions, we ought to try to produce the intuitions that best approximate the conclusions that the archangel would reach. Whether our intuitions contribute to our understanding of the real moral sense of the situations we find ourselves in, then, is entirely a function of whether or not they are in agreement with the principles of the idealized moral agent. Since we are not archangels, moral intuitions

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<sup>20</sup> Ibid., 40.

<sup>21</sup> Ibid., 44.

<sup>22</sup> Ibid.

are valuable to us as a second best, but they cannot be understood as a rival source of moral understanding.

In *Existentialism is a Humanism*, Jean-Paul Sartre presents a radically different account of the behavior-guiding value of universal moral principles. Sartre rejects the possibility of any kind of archangel's point of view, from which we could discern unambiguously the moral sense of any situation we might find ourselves in. The reason Sartre puts forward in defense of this claim is remarkably similar to the reason Hare puts forward for the necessity of critical moral thinking: we frequently find ourselves in situations that are too complex for our moral understanding to master. But whereas Hare sees this as a reason to raise ourselves to a higher level of moral reasoning, where we can render the complexities that we experience at the level of our intuitions more manageable, Sartre sees it as a reason to doubt moral theorizing *tout court*. According to Sartre, the values that different theories put forward as guides for behavior are simply too general to apply unambiguously to cases like the one faced by his student who had to choose between joining the Free French Forces and remaining at home to take care of his mother. The familiar Kantian obligation to treat others as ends, and never merely as means, for example, underdetermines the student's decision: no matter which course of action he chooses, he will be unable to avoid treating either his mother or those fighting in the Resistance as means. And likewise, the Christian value of sacrifice underdetermines the decision concerning for whom and for what the student should sacrifice.<sup>23</sup>

Essential to Sartre's larger argument is the claim that there are no signs in the world that can help point the way to the correct course of action. Whenever there appear

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<sup>23</sup> Sartre, EH, 31-33.

to be such signs, closer examination reveals that the agent was wholly responsible for having chosen their meaning. Sartre gives as an example an acquaintance of his who had failed out of military training school at the age of twenty-two. The acquaintance took this failure as a sign that “he was not destined for secular success, and that his achievements would be attained only in the realms of religion, sanctity, and faith.”<sup>24</sup> But of course this was not the only possible interpretation of the failure; he could just as well have interpreted it as a sign, for example, that he needed to work harder in order to achieve secular success or that he was meant for secular success in some other field. If the sign pointed the acquaintance in the direction of a life devoted to religion, that is because he freely chose to give that sense to the sign. Of course a sign whose sense is determined entirely by the interpreter is not really a sign at all. Hence, the ultimate determinant of the correct course of action is neither abstract ethical theory nor signs given in the world, but rather the subject’s free choice. Sartre’s account of moral sense-bestowal, then, is neatly summed up in the advice he gave to the student faced with the choice between fighting in the Resistance and supporting his mother: “You are free, so choose; in other words, invent.”<sup>25</sup>

An obvious objection that one could raise against Sartre’s account of moral sense bestowal is that it cannot account for an undeniable fact of our everyday moral experience, namely that we often seek the advice of others when we find ourselves in morally difficult circumstances. If there really are no signs to guide the way to correct moral decisions, and if the moral sense of a situation really is given entirely by the subject who freely chooses it, then the act of soliciting moral advice seems utterly

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<sup>24</sup> Ibid., 34.

<sup>25</sup> Ibid., 33.

pointless. It seems as if we ask others for moral advice precisely because we trust that they are able to read the signs in a way that we cannot. According to Sartre, though, the act of seeking moral advice does have a point, albeit not the one we might expect. As Sartre sees it, we seek moral advice because we want to conceal from ourselves our total responsibility for choosing our course of action; we want there to be an objectively correct solution to the moral dilemma and we want to pass off the responsibility for determining that solution onto someone else. But in choosing whom to ask for advice, we give away the show: if I go to a priest for advice, for example, it is because I have already determined what course of action to take and because I know that the priest will tell me what I want to hear. If I had determined to resolve the dilemma in a different way, I would have sought out a different advisor. We do not seek out moral advice, then, in order to help clarify the ambiguous moral sense of the situations we find ourselves in, but rather to have the moral sense we've already decided upon rubber stamped by a putative voice of authority. The act of seeking out moral advice, in other words, is in bad faith.

### III. Merleau-Ponty's Phenomenology of Expression

In this section I want to argue that the phenomenology of expression developed by Maurice Merleau-Ponty suggests a moral theory that rejects both the Harean and the Sartrean positions. As I will argue in what follows, Merleau-Ponty would agree with claim, essential to Hare's theory, that our moral intuitions are not self-justifying, but he would deny that this fact requires a movement to a higher level of moral thinking that could determine unambiguously the moral sense of the situations we find ourselves in. And Merleau-Ponty would certainly agree with Sartre's claim that there is an irreducibly creative and subjective moment in moral sense-bestowal, but he would deny that this

means there are no signs in the world that we can use to help us better understand the moral sense of situations.

In order to introduce the philosophy of expression that will form the basis of what I am calling the Merleau-Pontian position on moral dilemmas, I would like to begin by describing what expression is not. First, expression is not merely the making public of significations that are fully present within the mind of the expressing agent. That is to say, the expressing agent does not merely produce signs that symbolize her own fully formed ideas and that remind her interlocutor of the very same fully formed ideas in his own mind.<sup>26</sup> This public-making account of expression is problematic for a number of reasons, among the most important of which is that it renders some of the most basic facts of human communication inexplicable. Specifically, it would follow from this account that communication could never bring interlocutors to understand things differently from the ways they already do. To understand my interlocutor would be to convert the signs she produced back into thoughts that I already possess. But communication obviously does yield genuinely new and unforeseen understandings.<sup>27</sup> Merleau-Ponty takes literature as especially exemplary of this point. In Stendhal's *The Charterhouse of Parma*, the character Rassi is presented as a rogue. In order to understand Stendhal's expression, I must already know the idea that is represented by the word "rogue." But that is not enough. I cannot understand the character Rassi merely by knowing that he is a token of the type "rogue." The term does more than merely stand in for an idea that I already have in my stock of significations. I know this because once I

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<sup>26</sup> Maurice Merleau-Ponty, *Signs*, trans. Richard C. McCleary (Evanston: Northwestern University Press, 1964), 42. Hereafter S.

<sup>27</sup> Maurice Merleau-Ponty, *Phenomenology of Perception*, trans. Colin Smith (London: Routledge & Kegan Paul, 1962), 178-179.

have picked up the sense of Stendhal's expression, I develop an understanding of what it is to be a rogue that is richer and more nuanced than the one I had when I began reading the novel. Of course I must come to the novel with a relatively determinate conception of "rogue;" if I did not, then I would not grasp the sense of Stendhal's Rassi any more than I would if he had been depicted as a kzomil. As Merleau-Ponty puts it, "I have access to Stendhal's outlook through the commonplace words he uses. But in his hands, these words are given a new twist. The cross references multiply. More and more arrows point in the direction of a thought I have never encountered before...."<sup>28</sup> Eventually, the sense toward which those arrows point crystallizes and I grasp Stendhal's sense. None of this would be possible if expression amounted to nothing more than a making of public of signs that stood for fully determinate thoughts shared by all the parties to the communication.

If expression is not the translation into symbols of already fully determinate thoughts, then neither can it be understood as the pure creation of meaning *ex nihilo*. Whenever I express myself, I find that I can only do so by making use of an already existing system of meanings. If, in an attempt to express a meaning that would be absolutely new, I were to completely disregard the stock of significations as it already existed in my language, then I would end up producing utter nonsense. I would express nothing at all. Expression, then, is necessarily embedded in an already existing world of sense. It is responsive to a sense that is given vaguely and as calling for the words that would crystallize it. As Merleau-Ponty writes in the Introduction to *Signs*, "there is that

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<sup>28</sup> Maurice Merleau-Ponty, *The Prose of the World*, ed. Claude Lefort, trans. John O'Neill (Evanston: Northwestern University Press, 1973), 12. Hereafter PW. In both the French original and in the English translation, Merleau-Ponty refers to the character from Stendhal's novel as Rossi. The character is in fact named Rassi.



which is to be said, and which is as yet no more than a precise uneasiness in the world of things-said.”<sup>29</sup> We can see this especially clearly in cases where we find ourselves struggling to find just the right way to express the intimated sense. We strain toward what we want to say, trying out various formulations in an effort to capture the sense that solicits us.<sup>30</sup> Sometimes we hit on exactly the right expression, and the sense that was given in a nascent way is captured in an articulated signification. In these cases of successful expression, it seems to us as if the correct formulation had been there all along, and that we had discovered rather than created it. But in other cases, the right words never come. And this is not necessarily because we lack the resources to say what we mean; sometimes it turns out that we didn’t really mean anything determinate or determinable in the first place. Merleau-Ponty summarizes this point nicely in a remark concerning specifically painterly expression: “‘Conception’ cannot precede ‘execution.’ Prior to expression, there is nothing but a vague fever, and only the work, completed and understood, will prove that there was *something* rather than *nothing* to be found there.”<sup>31</sup>

In his recent book, *Merleau-Ponty and the Paradoxes of Expression*, Donald A. Landes characterizes this nascent, determinable sense in terms of what Gilbert Simondon calls a metastable equilibrium. A state of sense is described as metastable when it is “precariously stable,” i.e., when there is a degree of tension between the sense that is expressible and the sense that has already been expressed.<sup>32</sup> In contrast to this, a state of sense would be in a stable equilibrium just in case all the sense that is expressible has

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<sup>29</sup> Merleau-Ponty, S, 19.

<sup>30</sup> Merleau-Ponty, PW, 6.

<sup>31</sup> Maurice Merleau-Ponty, *Sense and Non-sense*, trans. Hubert L. Dreyfus and Patricia Allen Dreyfus (Evanston: Northwestern University Press, 1964), 19. Translation modified.

<sup>32</sup> Donald A. Landes, *Merleau-Ponty and the Paradoxes of Expression* (London: Bloomsbury, 2013), GET PAGE 727 on Kindle.

already been expressed. Such a state would contain the lowest possible degree of potential sense; communication in that case really would amount to the exchanging of signs that function merely as monitors for meanings that the interlocutors already possess. On the other hand, if the state of sense were in an unstable equilibrium, meanings would not be fixed into established significations at all, and so once again genuine expression would be impossible.<sup>33</sup> Expression is possible because sense is metastable, because we experience an excess of determinable sense over determinate sense. This excess not only makes possible, but also calls for, the production of new determinations of sense. Once we have the aha moment when we discover just the right words to express the sense that had been given vaguely, we feel as if we have achieved a stable equilibrium. But this experience is illusory; by our act of expression we have indeed created a new equilibrium, but it is metastable as well. We will continue to experience an excess of determinable sense over determinate sense. To see how this is the case, we can return to Merleau-Ponty's description of what it is like to read Stendhal's account of Rassi the rogue in *The Charterhouse of Parma*. As we began to read, Stendhal's sense of "rogue" was there as nascent, as exceeding the meanings that we brought to the text as readers. But eventually we catch on to the sense of "rogue" that Stendhal is expressing, and we experience a kind of equilibrium. The text makes sense to us relatively unproblematically. But Stendhal has obviously not completely exhausted the sense of "rogue" in *The Charterhouse of Parma*; after the text is completed and understood, there remains considerable potential for further articulations of the sense of the term. Some time in the future, I will inevitably encounter other expressions of "rogue," and the sense that had crystallized from my reading of Stendhal will once again

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<sup>33</sup> Ibid.,

be thrown into disequilibrium. This process never reaches completion; there is no proposition or series of propositions that could gather up all of sense, leaving nothing more to be expressed. The sense to which we find ourselves responsive in acts of expression is ineluctably metastable.

Bernhard Waldenfels has demonstrated the value of this Merleau-Pontian account of the dynamic of expression for our understanding of ethics. Central for Waldenfels is the idea of expression as responsive. As an expressive being, I find myself responsive to a world of moral sense that is in a metastable equilibrium, with an excess of potential, determinable moral sense over determinate moral sense. I experience the situation as calling for me to do something, but I do not have a firm grasp of what that something is. I cannot, then, understand myself as an autonomous moral agent in the Kantian sense, acting spontaneously on the basis of principles that I have always before my mind and that enable me to tell without any difficulty what I ought and ought not to do.<sup>34</sup> Rather, “as a respondent I begin elsewhere, that is, there where I am not, where I have not yet been, and where I never will be.”<sup>35</sup> In other words, I do not have the moral sense of the situation to which I must respond; I must express that sense, and thereby bring it into being. Thus, “the respondent, like the lover in Lacan, gives what he does not have, but what is nonetheless demanded of him.”<sup>36</sup> He gives what he does not have because he must: it is impossible not to respond, for even the absence of response constitutes a kind

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<sup>34</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals* in Immanuel Kant, *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, trans. and ed., Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 58 [4:403-404]. Page numbers in brackets refer to those of the Akademie Edition.

<sup>35</sup> Bernhard Waldenfels, “Responsive Ethik zwischen Antwort und Verantwortung,” *Deutsche Zeitschrift für Philosophie* 58, no. 1 (2010): 79. All translations from this article are mine.

<sup>36</sup> Ibid.

of response.<sup>37</sup> If I am in a hurry, for example, and a tourist in my city attempts to make eye contact with me, hoping to get my attention so that she can ask me for directions, I might look the other way and keep walking. This refusal to respond is itself a response, and it gives expression to the ethical sense of the situation: the wide duty of beneficence I have toward other persons in general does not bind me in this case. The tourist's needs are not sufficiently weighty to interfere with my pursuit of my own interests. This impossibility of not responding constitutes the "must" of practical necessitation.<sup>38</sup> As beings who find ourselves having to act in a way that is responsive to metastable sense, we are subjected to something like a Kantian unconditional ought, but without being able to know for certain what it is we ought to do.

If this Merleau-Pontian account of moral sense-bestowal is descriptively accurate, then Sartre was correct to emphasize the creative role of the acting subject in determining the moral sense of the situations she finds herself in. As Waldenfels has argued, "what has to be done neither dwells in the things nor is it written in the stars. Referring to an inevitability, which precedes any choice, what has to be done has to be invented."<sup>39</sup> It follows from this that Sartre is also correct in arguing that "no general code of ethics can tell you what you ought to do."<sup>40</sup> What does not follow, however, is Sartre's very next claim, that "there are no signs in this world."<sup>41</sup> Sartre's own example about moral advice seeking serves well to show how our moral sense-bestowal is in fact oriented by signs in the world. When we seek advice concerning moral dilemmas, what we are doing is much

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<sup>37</sup> Ibid., 71.

<sup>38</sup> Ibid., 78.

<sup>39</sup> Bernhard Waldenfels, "Responsivity of the Body: Traces of the Other in Merleau-Ponty's Theory of Body and Flesh" in James Hatley, Janice McLane, and Christian Diehm, eds., *Interrogating Ethics: Embodying the Good in Merleau-Ponty* (Pittsburgh: Duquesne University Press, 2006), 99.

<sup>40</sup> Sartre, EH, 33.

<sup>41</sup> Ibid.

more like straining to catch on to the nascent sense of a novel than like the bad-faith attempt to conceal from ourselves our total responsibility for our choices. In Sartre's example of the student torn between joining the Free French Forces and supporting his mother, the situation is given to the student as metastable, as intimating a sense that is not yet determinate. In discussing the moral sense of the situation with another person, the subject is "receiving and giving in the same gesture."<sup>42</sup> He brings to the situation the stock of moral understandings that he has already acquired, just as one brings to the reading of Stendhal an already determinate understanding of "rogue." But as the conversation progresses, the subject remains receptive to the ways in which the emerging sense of the situation diverges from his already-determined stock of moral significations. Eventually, if his advice seeking is successful, he has an aha moment when the moral sense of the situation suddenly crystallizes. Such an aha moment has no place in Sartre's account of moral sense-bestowal. But that such moments do indeed happen suggests very strongly that our moral sense of the situation really is guided by signs in the world itself.

Again, if the Merleau-Pontian account of moral sense-bestowal is correct, then Hare is right to point out that our intuitions are not self-justifying, that it is always an open question whether our moral educations were good and whether the decisions we have made in the past were correct. This is because the sense to which we find ourselves responsive in our actions is metastable and thus open-ended: there is an excess of potential over determined moral sense. It is this excess that renders all of our moral commitments questionable. But Hare is wrong to suggest that we can eliminate this excess of potential sense by raising ourselves to a higher level of critical thinking. There is no act of expression that can bring about a stable equilibrium of sense, capturing the

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<sup>42</sup> Merleau-Ponty, PW, 11.

whole of moral sense in a set of principles; at best an act of expression can bring about a new metastable equilibrium. What that means from a practical point of view is that other, incompatible moral senses will continue to make claims on us. There remains, despite our best efforts, a moral remainder to which we cannot not respond.

From this we can conclude that moral dilemmas are indeed possible. But it is important here to clarify what we mean by moral dilemma, since different philosophers have used the term in some importantly different ways. In the passage from the *Metaphysics of Morals* cited near the beginning of this paper, for example, Kant suggests a conception of moral dilemmas that is not at all the same as Bernard Williams's or Ruth Barcan Marcus's. The Kantian conception is expressed well by Earl Conee, who argues that genuine moral dilemmas require there to be actions that are "*both* absolutely, unconditionally, and not merely *prima facie* morally obligatory, *and* absolutely, unconditionally, and not merely *prima facie* morally impermissible."<sup>43</sup> For there to be genuine moral dilemmas, in other words, it must be the case that a person is unconditionally obligated to do A and also unconditionally obligated not to do A. This conception sets the bar for moral dilemmas very high, and indeed excludes many of the cases that defenders of moral dilemmas typically put forward as examples. It is not the case, for example, that Sartre's student is unconditionally obligated to remain with his mother and also unconditionally obligated not to. Walter Sinnott-Armstrong has argued that definitions like Conee's set the bar so high as to render the possibility of moral dilemmas absurd: they would require there to be conflicts between two moral requirements each of which overrides the other.<sup>44</sup> But I would like to suggest another

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<sup>43</sup> Conee, AMD, 87.

<sup>44</sup> Walter Sinnott-Armstrong, *Moral Dilemmas* (Oxford: Basil Blackwell, 1988), 19. Hereafter MD.

reason why moral dilemmas of this sort do not exist. If an act is unconditionally obligatory, then it is, as Kant says, “morally impossible” not to do it.<sup>45</sup> No matter what kind of situation we find ourselves in, its moral sense is captured entirely by the moral law; there can be no possible moral sense in excess of the determined moral sense. But if the moral sense to which we find ourselves responsive is ineluctably metastable, and if no proposition or propositions can articulate that sense without remainder, then there is no act that is “absolutely, unconditionally, and not merely *prima facie* morally obligatory.” What Hare noted about our moral intuitions—that they are not self-justifying and that they are always questionable—is true of all our determinations of moral sense, including the categorical imperative. And this questionability is not merely subjective, a product of our limitations as human moral reasoners; it is moral sense itself that is questionable. Since there are always open possibilities of moral sense, nothing is morally impossible. It follows from this that there can be no moral dilemmas of the Kantian sort.

Assuming a definition that sets the bar a bit lower than the Kantian definition, however, genuine moral dilemmas are indeed possible. More specifically, there are moral dilemmas in the sense that Walter Sinnott-Armstrong gives to the term: situations in which

- (1) there is a moral requirement for an agent to adopt each of two alternatives,
- (2) neither moral requirement is overridden in any morally relevant way,
- (3) the agent cannot adopt both alternatives together, and
- (4) the agent can adopt each alternative separately.<sup>46</sup>

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<sup>45</sup> Immanuel Kant, *Critique of Practical Reason* in Immanuel Kant, *Practical Philosophy*, The Cambridge Edition of the Works of Immanuel Kant, trans. and ed., Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 196 [5:70]. Page numbers in brackets refer to those of the Akademie Edition.

<sup>46</sup> Sinnott-Armstrong, MD, 29.

The case in which I promise to meet a friend for lunch at a specific time, but then discover that my cat needs to be taken to the veterinarian, falls under this definition of moral dilemmas. I experience the moral sense of the situation as calling for me to perform each of the two acts, but I cannot do both. Given that there is always an excess of potential moral sense over determinate moral sense, I have no reason to assume the existence of some principle that could tell me unambiguously which action was my duty proper and which was merely an apparent duty. That each of the two acts really is a non-overridden moral requirement is suggested by the fact that when I choose to take my cat to the veterinarian, I still experience myself as obligated to my friend. This, of course, was the point that was central to Bernard Williams's argument. But the account of moral sense-bestowal suggested by Merleau-Ponty's phenomenology of expression gives us the tools to answer the most obvious objection to this argument, viz., that the existence of a feeling of regret does not entail the truth of any propositions connected with that feeling. It might be the case, in other words, that one of the requirements truly did override the other, and that the feeling of regret was therefore inappropriate. This objection, I want to argue, is based on a misunderstanding of the role of feeling in moral sense-bestowal. In all sorts of expression, including moral expression, it is a feeling, or what Merleau-Ponty called "a precise uneasiness" and a "vague fever," that first intimates to us that there is some nascent, potential sense to respond to. The novelist who searches for just the right words feels that there is some sense to be expressed. As he writes, he cannot know precisely what that sense is or whether he will be able to give it adequate expression. He cannot know these things because the nascent sense toward which he is straining is not a fully articulated sense that is concealed from him in the depths of his mind; the sense



only exists as a solicitation to expression. He will only know what the sense was, therefore, once he has expressed it: the conception can only come after the execution. And even after he has expressed it, he will find the sense still to be open-ended and metastable. The same dynamic applies to moral expression. As Waldenfels argued, we find ourselves responsive, irreducibly, to a moral sense that is nascent and full of potential, and that can thus call for expressions that are incompatible. At the time when we must act, we cannot know whether one actualization of the potential moral sense overrides or outweighs another possible actualization. Again, this is because there is no archangel's point of view, no stable, fully articulated moral sense that we can use as a measure for the nascent sense that we experience as making claims on us. Moral sense exists only as a felt solicitation to expression, and this continues to be the case even after we have expressed that sense as carefully and as conscientiously as we could. This explains why the claim of the option not chosen can continue to weigh on us and why we cannot understand the experience of that weight as a merely subjective feeling with no role to play in disclosing the moral sense of situations. The experience of moral remainder, then, understood in terms of Merleau-Ponty's phenomenology of expression, gives us as compelling a reason as we could want that there are genuine moral dilemmas.